

# EXHIBIT “O”

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1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT

3 HECTOR RIVAS,

4 Petitioner-Appellant,

5 v.

13-2974-pr

6 BRIAN FISCHER, Superintendent,  
7 Sing Sing Correctional Facility,

8 Respondent-Appellee,

SHOW-CAUSE HEARING

9  
10  
11 New York, N.Y.  
12 April 6, 2016  
13 3:05 p.m.

14 Before:

15 HON. JOSÉ A. CABRANES, Presiding,  
16 HON. ROSEMARY S. POOLER,  
17 HON. ROBERT D. SACK,

18 Circuit Judges

19 APPEARANCES

20 LANGONE & ASSOCIATES

Attorneys for Petitioner-Appellant

21 BY: RICHARD M. LANGONE

22 NEW YORK STATE ATTORNEY GENERAL

Attorneys for Respondent-Appellee

23 BY: PRISCILLA I. STEWARD, AAG

24 ALSO PRESENT: SIDNEY L. MANES, ESQ.

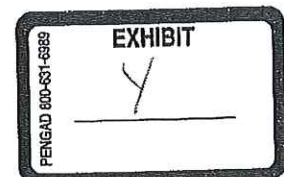
EDWARD W. KLEIN, ESQ.

CASEY JOHNSON, ESQ.

KIMBERLY M. ZIMMER, ESQ.

25 ROBERT E. MORAN, ADA, Onondaga County

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1 convicted, Mitchell was let off the hook. He was allowed to  
2 plead out and avoid the --

3 JUDGE POOLER: He left his job.

4 MR. LANGONE: And he left his job.

5 JUDGE POOLER: So was it going on contemporaneously?

6 MR. LANGONE: Contemporaneously.

7 There was an investigation with the DEC.

8 JUDGE POOLER: This is a factual issue.

9 MS. STEWARD: He was not being investigated by the  
10 DA's office. That investigation with the DA's office did not  
11 begin until four months after the trial was over.

12 JUDGE CABRANES: Let's just state the obvious: In our  
13 opinion we set forth with as much care as possible what we  
14 thought to be the facts. And I'm not aware -- maybe my  
15 colleagues are aware, I'm not aware of any effort by anyone in  
16 the state to correct any misapprehension by us. I recall no  
17 such -- it may be that Ms. Steward had a different view of the  
18 facts, but whatever that view may be was never conveyed to us  
19 in the aftermath of the decision.

20 JUDGE POOLER: And before the DA started  
21 investigating -- I know this because I live in Onondaga  
22 County -- there were stories in the newspaper about his  
23 integrity as a coroner. And that was going on for a while  
24 before the DA began his investigation. He was under attack by  
25 his former employees in the office.

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1 MS. STEWARD: That's right. That was, I believe, in  
2 1992/1993. But they were not related to his -- the way he did  
3 his job, and they weren't related to the way he did his job in  
4 this case.

5 JUDGE POOLER: Allegedly.

6 MR. MORAN: If I may, Judge.

7 MR. MANES: If you'll forgive me, your Honor, she  
8 indicates that the DA wasn't investigating, that may be true.  
9 The Department of Environmental Conservation has investigated  
10 Dr. Mitchell for 144 misdemeanors: For disposing of body  
11 parts, for pouring material blood down the sink. So the people  
12 who would have prosecuted Dr. Mitchell was not the DEC, it  
13 would have been the district attorney.

14 JUDGE POOLER: He knew about the DEC to the best of  
15 our knowledge?

16 MS. STEWARD: We have no evidence of that.

17 JUDGE POOLER: There's no evidence that he knew the  
18 DEC was investigating?

19 MR. LANGONE: He said to the press, He was my friend  
20 for 20 years and he's resigning and he's leaving. That's  
21 exactly why he wasn't prosecuted, because he agreed to resign.

22 MS. STEWARD: That's not evidence that he knew about  
23 the DEC investigation.

24 JUDGE CABRANES: Hold on.

25 We understand that there are differences of

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1 perspective here, but given this colloquy, Mr. Moran, do you  
2 have anything to add?

3 MR. MORAN: I'm not calling Dr. Mitchell; I'm calling  
4 Dr. Stoppacher. Stoppacher reviewed the --

5 JUDGE POOLER: But it's based on Dr. Mitchell's notes.

6 MR. MORAN: Yes. It's not that unusual.

7 JUDGE CABRANES: His testimony will consist of an  
8 evaluation of the notes 20-plus years ago?

9 MR. MORAN: Yes. And the temperature that was at the  
10 house, and the condition that the body was in, and then he'll  
11 estimate the time of death.

12 JUDGE POOLER: Will we also consider Dr. Wecht's  
13 testimony?

14 MR. MORAN: I haven't. I plan on calling  
15 Dr. Stoppacher. Dr. Stoppacher has looked at --

16 JUDGE POOLER: I understand. But Dr. Wecht testified  
17 at a hearing later and he contradicted Dr. Mitchell. I'm  
18 wondering if the medical examiner would be able to respond to  
19 that testimony as well.

20 MR. MORAN: I'm sure that he will. I look forward to  
21 crossing Dr. Wecht.

22 JUDGE CABRANES: Mr. Langone, you had something to say  
23 on this?

24 MR. LANGONE: It just slipped my mind, Judge. It will  
25 come back to me.

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